

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

	x	
	:	
UNITED STATES OF AMERICA,	:	Criminal Action
	:	
Plaintiff,	:	No. 2:14-cr-00276
	:	
v.	:	
	:	Date: March 18, 2015
MICHAEL BURDETTE,	:	
	:	
Defendant.	:	
	x	

TRANSCRIPT OF PLEA HEARING HELD  
BEFORE THE HONORABLE THOMAS E. JOHNSTON, JUDGE  
UNITED STATES DISTRICT COURT  
IN CHARLESTON, WEST VIRGINIA

APPEARANCES:

For the Government:      AUSA PHILIP H. WRIGHT  
                                 AUSA LARRY D. ELLIS  
                                 AUSA ERIC P. BACAJ  
                                 U.S. Attorney's Office  
                                 P.O. Box 1713  
                                 Charleston, WV 25326-1713

For the Defendant:      SUSAN M. ROBINSON, ESQ.  
                                 Thomas Combs & Spann  
                                 P. O. Box 3824  
                                 Charleston, WV 25338-3824

Probation Officer:      Matthew Lambert

Court Reporter:      Ayme Cochran, RMR, CRR

Proceedings recorded by mechanical stenography;  
transcript produced by computer.

1 PROCEEDINGS had before The Honorable Thomas E. Johnston,  
2 Judge, United States District Court, Southern District of West  
3 Virginia, in Charleston, West Virginia, on March 18, 2015, at  
4 10:11 a.m., as follows:

5 COURTROOM DEPUTY CLERK: The matter before the Court is  
6 the United States of America versus Michael Burdette, criminal  
7 action number 2:14-cr-00276, scheduled for a plea hearing.

8 THE COURT: Good morning. Will counsel please note  
9 their appearances?

10 MR. WRIGHT: Good morning, Your Honor. Philip Wright  
11 and Eric Baca on behalf of the United States, and seated at  
12 counsel table is Special Agent Nick Gillespie.

13 MS. ROBINSON: Good morning, Your Honor. Susan  
14 Robinson on behalf of the defendant, Michael Burdette, who is  
15 present in person at counsel table.

16 THE COURT: Good morning.

17 Mr. Burdette, will you please stand, and I will ask the  
18 deputy clerk to administer an oath to you at this time.

19 COURTROOM DEPUTY CLERK: Please raise your right hand.

20 **MICHAEL BURDETTE, DEFENDANT, SWORN**

21 THE COURT: You may be seated.

22 Mr. Burdette, do you understand that you are now under oath  
23 and you must tell the truth and, if you testify falsely, you may  
24 face prosecution for perjury or for making a false statement?

25 THE DEFENDANT: Yes, sir.

1           THE COURT: All right. Throughout the course of this  
2 hearing, I'm going to be asking you a number of questions and I  
3 want to make sure that you and I are communicating clearly. So,  
4 if at any time I ask a question that you don't understand or  
5 anything else occurs in this hearing that you don't understand, I  
6 want you to feel free to speak up and seek clarification.

7           Also, if at any time you need to confer with your attorney,  
8 I'll be pleased to pause the proceedings to allow you to do so.

9           Do you understand all that?

10          THE DEFENDANT: Yes, sir.

11          THE COURT: All right. Let me begin by asking you, how  
12 old are you?

13          THE DEFENDANT: 60 years old.

14          THE COURT: And can you briefly describe your  
15 educational background?

16          THE DEFENDANT: I have a B. S., a Mechanical  
17 Engineering Degree from West Virginia Institute of Technology. I  
18 also have nine hours towards an M. B. A.

19          THE COURT: For the record, can you read and write and  
20 understand the English language?

21          THE DEFENDANT: I'm sorry, Your Honor, I didn't --

22          THE COURT: I said, for the record, can you read and  
23 write and understand the English language?

24          THE DEFENDANT: Yes, sir.

25          THE COURT: All right. And can you briefly describe

1 your work experience?

2 THE DEFENDANT: I have 30-plus years of experience in  
3 engineering-related positions in the construction, nuclear and  
4 chemical industries.

5 THE COURT: Have you taken any medicine or drugs or  
6 consumed any alcoholic beverages within the last 24 hours?

7 THE DEFENDANT: No, sir.

8 THE COURT: Including prescription drugs?

9 THE DEFENDANT: I have my prescription that I take.  
10 It's a topical, AndroGel.

11 THE COURT: Oh, all right. And have you taken that in  
12 the last 24 hours?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And, to the best of your knowledge, are you  
15 suffering from any side effects from that medication that would  
16 in any way affect your ability to fully participate in this  
17 hearing today?

18 THE DEFENDANT: No, sir.

19 THE COURT: Have you ever been treated for any mental  
20 illness or addicted to drugs of any kind?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Do you know where you are and why you are  
23 here today?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Do you have any hearing impairment or other

1 disability which would prevent you from fully participating in  
2 this hearing today?

3 THE DEFENDANT: I can participate. I do have hearing  
4 loss and I wear a hearing aid, so I just want to make you aware  
5 of that.

6 THE COURT: Have you had any trouble -- other than a  
7 moment ago when I may have mumbled a little bit, have you had any  
8 trouble hearing me today?

9 THE DEFENDANT: No, sir.

10 THE COURT: All right. If you do have trouble hearing  
11 me or anyone else that is speaking today, I want you to  
12 immediately let us know, because it's important that you hear and  
13 understand everything that occurs in this hearing. Do you  
14 understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right.

17 Ms. Robinson, do you have any reason to question the  
18 competence of your client?

19 MS. ROBINSON: I do not, Your Honor

20 THE COURT: All right. I believe I've been provided  
21 with the original of the plea agreement.

22 Mr. Wright, has that changed in any way since the courtesy  
23 copy that was provided to my chambers?

24 MR. WRIGHT: No, Your Honor.

25 THE COURT: All right. Very well.

1           Mr. Burdette, is that your signature that appears on the  
2 seventh and final page of the plea agreement itself?

3           THE DEFENDANT: Yes, Your Honor.

4           THE COURT: And are those your initials that appear on  
5 the other pages of the plea agreement?

6           THE DEFENDANT: Yes, Your Honor.

7           THE COURT: And have you read and reviewed with your  
8 counsel each of the 15 paragraphs of the plea agreement and the  
9 exhibits attached to the plea agreement?

10          THE DEFENDANT: Yes, Your Honor.

11          THE COURT: And do you wish to have the various terms  
12 of the plea agreement orally stated on the record, or do you  
13 believe that that's unnecessary?

14          THE DEFENDANT: I believe it's unnecessary.

15          THE COURT: And do you understand and agree with all of  
16 the terms and provisions contained in the plea agreement?

17          THE DEFENDANT: Yes, Your Honor.

18          THE COURT: And, Ms. Robinson, have you reviewed with  
19 your client each of the 15 paragraphs of the plea agreement and  
20 the exhibits attached thereto?

21          MS. ROBINSON: I have, Your Honor.

22          THE COURT: Ms. Robinson and Mr. Wright, is there any  
23 reason why either of you believe that the various terms of the  
24 plea agreement should be orally stated on the record?

25          MR. WRIGHT: I do not, Your Honor.

1 MS. ROBINSON: No, Your Honor.

2 THE COURT: All right. Nonetheless, Mr. Burdette,  
3 there are some provisions of the plea agreement that I want to  
4 discuss with you, starting on Page 3 with Section 9, which is  
5 entitled "Stipulation of Facts and Wavier of Federal Rules of  
6 Evidence 410".

7 Now, this section -- and it us runs over onto Page 4. This  
8 section relates to a couple of different matters, the first of  
9 which is the Stipulation of Facts, which is attached as Exhibit B  
10 to the plea agreement, and I want to turn your attention to that  
11 document now.

12 That is a six-page document and, on the sixth page, is that  
13 your signature which appears there?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And have you read the Stipulation of Facts?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: And do you agree that all the facts  
18 contained in the stipulation are true?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: All right. A little bit about what will be  
21 happening from here on out. I will be asking the probation  
22 officer to prepare a Presentence Investigation Report. That  
23 report will contain detailed recommended factual findings  
24 regarding this offense and your background, among other things.

25 Ultimately, at sentencing, I will make factual findings

1 based at least in part on the recommendations contained in the  
2 Presentence Report.

3 Now, you and the government have reached an agreement  
4 regarding certain facts contained in this stipulation, but I want  
5 you to understand that in this process, neither the probation  
6 officer, nor this Court, are bound by that Stipulation of Facts.  
7 Do you understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Do you further understand that if I make  
10 findings of fact at sentencing that are different from or  
11 inconsistent with the facts contained in the stipulation, you  
12 will still be bound by your guilty plea and would have no right  
13 to withdraw it?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: All right. The other matter addressed in  
16 Section 9 is a Waiver of Federal Rule of Evidence 410.

17 Now, first of all, do you understand that a "waiver" is a  
18 legal term that means you're giving something up?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: All right. Now, Rule 410 generally  
21 provides that information or documents regarding plea  
22 negotiations, and this Stipulation of Fact would fall into that  
23 category, that is -- those are generally not admissible at trial;  
24 in other words, the government can't use those sorts of things  
25 against you at trial.



1           However, if you withdraw from this plea agreement or it's no  
2           longer any good because you have violated one or more of its  
3           terms and there is a subsequent trial, under this waiver, the  
4           government would be allowed to present the Stipulation of Facts  
5           in its case in chief or for other purposes at that trial.

6           Do you understand that waiver?

7           THE DEFENDANT: Yes, Your Honor.

8           THE COURT: All right. Next, I want to refer you to  
9           Section 10 of the plea agreement, which appears on Page 4, and is  
10          entitled "Agreement on Sentencing Guidelines".

11          Now, before we get into this, I want to ask you, has your  
12          attorney talked with you about the federal sentencing guidelines  
13          and how they generally work?

14          THE DEFENDANT: Yes, Your Honor.

15          THE COURT: And has she shown you that chart in the  
16          back of the book?

17          THE DEFENDANT: Yes, Your Honor.

18          THE COURT: Well, working from that, I want to have a  
19          similar discussion with you.

20          If you'll recall from the chart, there's a series of numbers  
21          that run from low to high on the left side of the page as you go  
22          down. Those are offense levels, and the offense level is  
23          calculated by a starting with a Base Offense Level, which is a  
24          starting point, and then that number can be adjusted upward or  
25          downward, depending on the facts and circumstances of the case,

1 to arrive at an adjusted offense level.

2 Then consideration is given -- generally given for a  
3 reduction for acceptance of responsibility. Has your attorney  
4 talked with you about that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: All right. Then, you generally arrive at a  
7 Total Offense Level. Then, you go up to the top of the chart and  
8 there are six criminal history categories, and you would fall  
9 into one of those, depending on the number of points, if any,  
10 assigned to any prior convictions that you may have.

11 Then you combine the criminal history category and the Total  
12 Offense Level and arrive at a point in the chart that gives a  
13 range of months of imprisonment. Certain parts of the chart  
14 allow for certain alternatives to imprisonment.

15 Do you understand all of these things about the guidelines  
16 so far?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: All right. Once we calculate that  
19 guideline range, I have the authority to sentence you within that  
20 range. I also have the authority to sentence you, under some  
21 circumstances, outside of that range, either above it or below  
22 it.

23 If I sentence you outside of the range based on factors  
24 identified in the guidelines themselves, that's generally known  
25 as a departure. If I sentence you outside of the range based on

1 factors outside of the guidelines, that's generally known as a  
2 variance.

3 Do you understand all of these things I have discussed with  
4 you about the guidelines?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Has your attorney explained all of these  
7 things to you, as well?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: All right. Well, with all of that in mind,  
10 Section 10 contains an agreement on the guidelines that you have  
11 reached with the government. Now, this is similar to the  
12 Stipulation of Facts in that there will be a recommended  
13 guideline calculation in the Presentence Report that the  
14 probation officer will prepare and, ultimately, I will make  
15 guideline findings at sentencing based at least in part on those  
16 recommendations.

17 Now, even though you have reached an agreement with the  
18 government here in Section 10, I want you to understand that,  
19 once again, that in this process, neither the probation officer,  
20 nor this Court, are bound by that agreement on the guidelines.  
21 Do you understand that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Do you further understand that if I make  
24 guideline findings at sentencing that are different from or  
25 inconsistent with this agreement on the guidelines, you will

1 still be bound by your guilty plea and would have no right to  
2 withdraw it?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: All right. Next, I want to refer you to  
5 Section 11 of the plea agreement, which starts on Page 4 and runs  
6 over onto Page 5, and it's entitled "Waiver of Appeal and  
7 Collateral Attack".

8 Now, this section relates to a couple of different  
9 procedures that I want to go over with you briefly.

10 An "appeal" is a procedure by which a party to a case before  
11 a District Court like this one and, in a criminal case, it is  
12 often the defendant, goes to the Court of Appeals, or the next  
13 level up of the court system, and argues that certain errors or  
14 mistakes may have taken place in their criminal case before the  
15 District Court.

16 A "collateral attack" is similar, but it is a separate civil  
17 case that may be filed after a criminal case is over and it's  
18 sometimes referred to as a "habeas corpus petition" in which the  
19 defendant may also argue that certain errors or mistakes took  
20 place in their criminal case before the District Court.

21 Now do you understand those two procedures, at least as I've  
22 briefly described them to you?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: All right. Secondly, I would like to  
25 explain to you that there are two phases to a criminal case

1 generally.

2 The first phase is the guilt or innocence phase in which  
3 that determination is made. It starts at the very beginning of  
4 the case and includes all proceedings up to the point where that  
5 determination is made. Sometimes, guilt or innocence is  
6 determined by a trial. Much more often, it is determined by a  
7 guilty plea, like what we're doing today.

8 Once a finding of guilt has been made, then we go to the  
9 penalty phase in which, obviously, the penalty for the crime is  
10 determined, and that generally concludes with a sentencing  
11 hearing at the end of the case.

12 Now do you understand the two phases of a criminal case as  
13 I've described them to you?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: All that. With all that in mind then,  
16 Section 11 contains -- the first paragraph contains an appeal  
17 waiver and I want to go over that with you now.

18 Do you understand that you waive the right to appeal your  
19 conviction and any sentence of imprisonment, fine or term of  
20 supervised release, or the manner in which the sentence was  
21 determined on any ground whatsoever, with two exceptions:

22 One, you may appeal any sentence of restitution ordered as a  
23 condition of supervised release;

24 And, two, you may appeal any sentence that is greater than  
25 the maximum penalty set forth by statute.

1 Do you understand that waiver?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Anything about it that you don't understand  
4 or that you have questions about?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: Do you also understand that under the  
7 second paragraph of Section 11, you may not file a later civil  
8 proceeding, sometimes referred to as a "habeas corpus petition",  
9 or a "collateral attack", challenging your plea, conviction or  
10 sentence? Do you understand that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Finally, do you understand that you are in  
13 no event waiving your right to claim ineffective assistance of  
14 counsel, either on appeal or by collateral attack?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: All right. Next, I want to refer you to  
17 Section 12 of the plea agreement, which appears on Page 5 and  
18 it's entitled "Waiver of FOIA and Privacy Right".

19 Now, this waiver means you can't go back after this case is  
20 over and seek documents or other information about the case from  
21 the government even with a Freedom of Information Act request.  
22 Do you understand that waiver?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: All right. Ms. Robinson, have  
25 you thoroughly reviewed the plea agreement with your client?

1 MS. ROBINSON: Yes, Your Honor, I have.

2 THE COURT: And do you believe that he fully  
3 understands the various terms and provisions of the plea  
4 agreement, including the waivers and other matters that I have  
5 gone over with him today?

6 MS. ROBINSON: Yes, he does.

7 THE COURT: Mr. Burdette, have you reviewed the plea  
8 agreement in detail with your attorney?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Do you believe that you have had adequate  
11 time to discuss your case fully with your attorney?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Has your attorney answered any questions  
14 that you have had about your case?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Ms. Robinson, during your representation of  
17 the defendant, has he been cooperative?

18 MS. ROBINSON: He has been, Your Honor.

19 THE COURT: Mr. Burdette, has anything further been  
20 agreed to, either orally or in writing, that is not contained in  
21 the plea agreement?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: All right. I will order that the plea  
24 agreement be filed.

25 I will find that the defendant understands and agrees with

1 the terms and conditions contained in the plea agreement.

2 I will defer accepting or rejecting the plea agreement until  
3 sentencing, after the Presentence Report has been received and  
4 considered.

5 Just to check, Mr. Burdette, have you been able to hear  
6 everything I said okay?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Okay. Very well.

9 Have you received and read and reviewed with your attorney  
10 the single-count information, or charging document, that has been  
11 presented in this case?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And do you understand the charges contained  
14 in the information?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Would you like me to read the information  
17 to you or will you waive the reading of the information?

18 THE DEFENDANT: We'll waive the reading.

19 THE COURT: All right. As I understand it, you will be  
20 pleading guilty to a single-count information, which charges you  
21 with negligent discharge of a pollutant in violation of 33 U. S.  
22 C. Section 1319(a)(1)(A) [sic] and 1311. Now, I want to go over  
23 that charge and those statutes with you in just a little bit more  
24 detail.

25 Section 1319(c)(1)(A) -- I'm sorry -- I said "(A)" earlier,



1 (c) (1) (A) provides in pertinent part that:

2 "Any person who negligently violates Section 1311 of this  
3 title shall be punished by a fine of not less than \$2,500.00, nor  
4 more than \$25,000.00 per day of violation, or by imprisonment for  
5 not more than one year, or by both."

6 Now, Section 1311 provides that:

7 "Except as in compliance with this section and Section 1312,  
8 1316, 1317, 1328, 1342 and 1344 of this title, the discharge of  
9 any pollutant by any person shall be unlawful."

10 Now, in order to prove this charge against you, the  
11 government would have to prove the following elements of the  
12 crime, each beyond a reasonable doubt, and they are:

13 First, that a pollutant was discharged from a point source  
14 into waters of the United States;

15 And, second, that the discharge did not occur pursuant to a  
16 Clean Water Act permit;

17 And, finally, your negligent conduct proximately caused the  
18 discharge.

19 Now, I want to share with you some definitions that apply to  
20 what I have just told you.

21 A "pollutant" includes solid wastes, chemical wastes, and  
22 industrial, municipal, and agricultural wastes.

23 To "discharge" means to add to the navigable waters of the  
24 United States, the contiguous zone, or the ocean.

25 The term "navigable waters of the United States" includes

1 interstate waters, waters which have been or may be susceptible  
2 to use in interstate commerce, and tributaries of such waters.

3 A "point source" means any discernible, confined and discrete  
4 conveyance, including but not limited to any pipe, ditch,  
5 channel, tunnel, conduit, well, discrete fissure, container,  
6 rolling stock, concentrated animal feeding operation, or vessel  
7 or other floating craft, from which pollutants are or may be  
8 discharged.

9 A "Clean Water Act permit" is a permit issued under the  
10 National Pollutants Discharge Elimination System by the federal  
11 government or a state government.

12 An act is done with "negligence" when a person fails to  
13 exercise the degree of care that a person of ordinary prudence  
14 would have exercised in similar circumstances.

15 Under the "responsible corporate officer" doctrine, the  
16 United States does not need to prove that you personally  
17 participated in the wrongful act. If you were a corporate  
18 officer who had responsibility and authority either to prevent  
19 the violation, or to promptly correct the violation, you may be  
20 held individually responsible. A corporate officer need not, in  
21 fact, exercise his or her authority, and the corporation need not  
22 expressly vest a duty in the officer to oversee the activity to  
23 be deemed a responsible corporate officer.

24 Are there any objections to the elements and definitions as I  
25 have described them?

1 MR. WRIGHT: No, Your Honor.

2 MS. ROBINSON: No, Your Honor.

3 THE COURT: All right. Next, I want to go over with  
4 you the maximum and any minimum sentences you may face as a  
5 result of your plea, and that is, a maximum term of imprisonment  
6 of one year; a fine of not less than \$2,500.00, nor more than  
7 \$25,000.00 per day of violation; alternatively, a maximum fine of  
8 \$100,000.00, or twice the gross pecuniary gain or loss resulting  
9 from your conduct, whichever is greater; and a maximum term of  
10 supervised release of one year. A mandatory special assessment  
11 of \$25.00 would be required; and restitution could be order, if  
12 it were found to be applicable.

13 Next, I want to return to our discussion of the guidelines.  
14 They are advisory, meaning they're not mandatory or don't have to  
15 be followed, but they'll nevertheless play an important role in  
16 your case from here on out.

17 This Court will consider the facts set forth in 18 U. S. C.  
18 Section 3553(a), including the advisory guidelines in determining  
19 the appropriate sentence in your case.

20 I now want to ask you some questions that will help me to  
21 understand your understanding of the advisory guidelines.

22 Have you discussed with your attorney the various factors  
23 which apply in determining what the sentence in your case may be  
24 under the advisory guidelines?

25 THE DEFENDANT: Yes, Your Honor.

1           THE COURT: And do you understand that, on this  
2 single-count information, you cannot in any event receive a  
3 greater sentence than the statutory maximum that I explained to  
4 you earlier?

5           THE DEFENDANT: Yes, Your Honor.

6           THE COURT: Do you understand that the Court will not  
7 determine a sentence for your case until a later date, when a  
8 Presentence Report has been completed, and both you and the  
9 government have had an opportunity to challenge the facts and  
10 analysis reported by the probation officer?

11          THE DEFENDANT: Yes, Your Honor.

12          THE COURT: Do you understand that under a concept  
13 known as "relevant conduct", this Court, in determining the Total  
14 Offense Level for sentencing purposes under the guidelines may  
15 take into account any conduct, circumstances or injuries relevant  
16 to the crime of which may be convicted?

17          THE DEFENDANT: Yes, Your Honor.

18          THE COURT: Do you understand that after the Court has  
19 determined what advisory guidelines apply to your case, the Court  
20 has the authority to vary or depart from the advisory guidelines  
21 and impose a sentence that is more severe or less severe than the  
22 sentence called for by the guidelines?

23          THE DEFENDANT: Yes, Your Honor.

24          THE COURT: Do you understand that in determining your  
25 sentence, the Court is obligated to calculate the applicable

1 sentencing guideline range, and to consider that range, possible  
2 departures under the guidelines, and other sentencing factors  
3 under 18 U. S. C. Section 3553(a)?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Do you understand that parole has been  
6 abolished and, if you're sentenced to prison, you will not be  
7 released on parole?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Do you understand, if the Court accepts  
10 your plea of guilty and the sentence is more severe than you had  
11 hoped for or expected, you will still be bound by your guilty  
12 plea and would have no right to withdraw it?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: All right. Just to -- just so we're clear  
15 for the record, this is a misdemeanor, and we don't need to do a  
16 waiver of indictment; is that correct?

17 MS. ROBINSON: That is correct, Your Honor.

18 MR. WRIGHT: I agree, Your Honor.

19 THE COURT: All right. Very well. I do, as well.

20 All right. Next, Mr. Burdette, I want to talk with you  
21 regarding your trial and constitutional rights.

22 You have the right to plead not guilty and maintain a not  
23 guilty plea throughout these proceedings, including at trial.

24 You have the right to be represented by counsel.

25 You have the right to a speedy and public trial by a jury

1 composed of citizens of this district.

2 You have the right to confront and have your attorney cross  
3 examine witnesses and have your attorney move to suppress any  
4 evidence she believes was illegally or unconstitutionally  
5 obtained.

6 You have the right not to testify or otherwise incriminate  
7 yourself;

8 And your exercise of this right cannot be held against you.

9 Do you understand all of these so far?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: You have the right to have the government  
12 prove its case beyond a reasonable doubt.

13 The jury's verdict would have to be unanimous.

14 You have the right present evidence on your own behalf.

15 You have the right to testify on your own behalf at trial;

16 And you have the right to subpoena witnesses to testify for  
17 you.

18 Do you understand all of these rights?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Any of them that you don't understand or  
21 that you have questions about?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Other than your right to counsel, do you  
24 understand that you will be giving up all of these rights by  
25 entering a plea of guilty?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Do you understand that once you've entered  
3 a plea of guilty, there's not going to be any trial, no jury  
4 verdict, and no findings of innocence or guilt based on disputed  
5 evidence presented to me or to a jury?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And I know that you haven't asserted such a  
8 claim but, just for the record, do you understand that by  
9 pleading guilty, you'll be waiving any argument that the U. S.  
10 Attorney's Office in this case should be disqualified?

11 THE DEFENDANT: Yes, Your Honor?

12 THE COURT: All right. Do you believe that you fully  
13 understand the consequences of entering a plea of guilty?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And, Ms. Robinson, having reviewed this  
16 case and the plea agreement in detail with your client, do you  
17 believe that he fully understands his rights and fully  
18 understands the consequences of entering a plea of guilty?

19 MS. ROBINSON: Yes, Your Honor, I do.

20 THE COURT: All right. I note that we have a detailed  
21 Stipulation of Facts. Is there any objection to the Court  
22 utilizing the stipulation in its consideration for the factual  
23 basis for the plea?

24 MR. WRIGHT: No, Your Honor.

25 MS. ROBINSON: Not from the defendant, Your Honor.

1 THE COURT: All right. Very well.

2 Mr. Burdette, will you please stand?

3 As to the charge contained in the single-count information,  
4 how do you plead, sir, guilty or not guilty?

5 THE DEFENDANT: I plead guilty.

6 THE COURT: You may be seated.

7 Your counsel has been provided with a written plea of guilty  
8 form. I would ask that you go over that with her, if necessary,  
9 sign and date it. Then I will ask her to sign it and tender it  
10 to the Court.

11 MS. ROBINSON: May I approach, Your Honor?

12 THE COURT: You may.

13 All right. I will note for the record that the defendant  
14 has signed and dated the written plea of guilty form, it has been  
15 witnessed by his counsel, and I will order that it be made a part  
16 of the record for this proceeding.

17 Mr. Burdette, is this plea the result of any threat, or  
18 coercion, or harassment of you by anyone?

19 THE DEFENDANT: No, your honor.

20 THE COURT: Is it the result of any promise or  
21 inducement other than those contained in the plea agreement?

22 THE DEFENDANT: Excuse me?

23 THE COURT: Is the plea the result of any promise or  
24 other inducement other than what's contained in the plea  
25 agreement?



1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Are you pleading guilty to protect anyone?

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: Are you acting voluntarily and of your own  
5 free will in entering this guilty plea?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Has anyone promised or predicted the exact  
8 sentence which will be imposed in this case?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: Do you understand that no one could know at  
11 this time the exact sentence which will be imposed?

12 Do you understand that no one could know at this time the  
13 exact sentence which will be imposed in your case?

14 THE DEFENDANT: Yes, I do. Yes. Sorry.

15 THE COURT: Do you understand that?

16 THE DEFENDANT: Yes, I understand that.

17 THE COURT: All right. Has your attorney adequately  
18 represented you in this matter?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Has your attorney left anything undone  
21 which you think should have been done?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Have you or your attorney found any defense  
24 to the charge contained in the information?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: Are you, in fact, guilty of the crime  
2 charged in the information? In other words, did you do it?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: All right. I will find that the defendant  
5 is competent and capable of entering an informed plea; that the  
6 plea is freely and voluntarily made; that the defendant  
7 understands the nature of the charges and is aware of the  
8 sequences of the plea.

9 I will find that the defendant understands his rights and  
10 understands that he is giving up these rights by entering a plea  
11 of guilty.

12 I will defer a factual basis finding, but I will accept the  
13 plea of guilty to the information, and will defer adjudging the  
14 defendant guilty until the time of sentencing.

15 I will ask the probation officer to prepare a Presentence  
16 Investigation Report.

17 Mr. Burdette, it is important that you cooperate fully with  
18 the probation officer in the preparation of the Presentence  
19 Report. If you fail to cooperate fully and truthfully with the  
20 probation officer, you may be subject to an enhancement of your  
21 sentence or the forfeiture of certain sentence reductions for  
22 which you might otherwise be eligible.

23 It is also important that you not commit any additional  
24 crimes between now and sentencing, as there may be additional  
25 punishments imposed for committing additional crime.

1 I'm going to set this matter for sentencing on June 24th,  
2 2015 at 10:00 a.m. I will put the other presentence dates in my  
3 post-plea order.

4 What is the government's position with regard to bond?

5 MR. WRIGHT: Your Honor, we agree with the assessment  
6 of the probation officer and a \$10,000.00 unsecured bond would be  
7 sufficient.

8 THE COURT: Is there any objection to that?

9 MS. ROBINSON: There is not, Your Honor, and we've  
10 asked for some exceptions to the travel restriction to the  
11 Southern District of West Virginia based upon his employment and  
12 his work travel, which I believe are contained in the Pretrial  
13 Services Report recommendations.

14 THE COURT: What are the specifics of that?

15 MS. ROBINSON: Mr. Burdette's employment is in Ironton,  
16 Ohio. The company that he works for is also developing business  
17 in the States of Georgia and in Florida and we would request that  
18 he be permitted to travel for work purposes.

19 THE COURT: Is there any objection to that?

20 MR. WRIGHT: No, Your Honor.

21 THE COURT: All right. I will allow that. I'm not  
22 sure that, given what you've described, that we need to  
23 necessarily modify the conditions, but I will allow him travel,  
24 as long as -- I will allow him that travel, as long as he  
25 notifies the probation officer in advance of the travel.

1 I guess what -- is his place of employment in Ironton, Ohio?

2 MS. ROBINSON: Yes. It would be in the Southern  
3 District of -- I haven't double checked if that's in the Southern  
4 District, but --

5 THE COURT: It is.

6 MS. ROBINSON: His daily place of employment is in the  
7 Southern District of Ohio.

8 THE COURT: Well, I will -- I think what I will do  
9 then, is I will modify the conditions to allow him to travel to  
10 Ironton, Ohio and the Southern District of Ohio for employment.

11 If he has to travel beyond the Tri-State area for work, I'll  
12 just ask that he notify the probation officer in advance of his  
13 travel plans.

14 All right. Anything else we need to take up?

15 I have signed my part of the bond papers, but I think we're  
16 going to need to add the Southern District of Ohio, but we can  
17 take care of that after the hearing. You will just need to see  
18 the deputy clerk about that.

19 Anything else we need to take up today?

20 MR. WRIGHT: No, Your Honor.

21 MS. ROBINSON: No, Your Honor.

22 (Proceedings concluded at 10:41 a.m., March 18, 2015.)

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## 1 CERTIFICATION:

2 I, Ayme A. Cochran, Official Court Reporter, certify that  
3 the foregoing is a correct transcript from the record of  
4 proceedings in the matter of United States of America, Plaintiff  
5 v. Michael Burdette, Defendant, Criminal Action No.  
6 2:14-cr-00276, as reported on March 18, 2015.

7  
8 s/Ayme A. Cochran, RMR, CRRApril 29, 2015

9 Ayme A. Cochran, RMR, CRR

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